

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6617 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MANOJBHAI C. PATEL

Versus

COMPETENT AUTHORITY AND ADDL. COLLECTOR

Appearance:

Shri M.R.Shah, Advocate, for Shri R.N. Shah,
Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for
the Respondent.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (the respondent herein) on 31st January 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 21st March 1990 in Appeal No.Vadodara-422 of 1984 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, the respondent declared the holding of the petitioner to be in excess of the ceiling limit by 507 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act. It was duly processed by the respondent. After observing necessary formalities under section 8 thereof, by his order passed on 31st January 1984 under section 8 (4) thereof, the respondent declared the holding of the petitioner to be in excess of the ceiling limit by 507 square metres. Its copy is at Annexure-B to this petition. The aggrieved petitioner carried the matter in appeal before the Appellate Authority under section 33 of the Act. It came to be registered as Appeal No.Vadodara-422 of 1984. By the order passed on 21st March 1990 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-A to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition.

3. It is the case of the petitioner that the holding in his hand was the joint Hindu family properties consisting of himself, his wife and his three major sons on the date of coming into force of the Act. In order to assist this court with respect to such factual position, learned Assistant Government Pleader Shri Sompura has kept one official from the office of the respondent present with the record of the case. It transpires therefrom that the petitioner has filed his declaration for and on behalf of his family and he has shown therein the interests of his three major sons and his wife in the properties held by him. It transpires from the material on record that the petitioner had produced the birth certificates of all his three sons and they were found to be major on the date of coming into force of the Act.

4. The respondent appears to have accepted the case

of the petitioner that his holding was the joint Hindu family properties in which his wife and his three major sons had interests. The respondent however treated the members of the family of the petitioner to be an association of persons. He therefore granted only one ceiling unit to the petitioner.

5. In this connection, a reference deserves to be made to the Division Bench ruling of this court in the case of CHHAGANLAL TRIKAMDAS THAKKAR v. COMPETENT AUTHORITY, RAJKOT reported in 1994 (1) Gujarat Current Decision at page 1. It has been held therein that members of family as owners of the joint Hindu family properties are not an association of persons. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. The view taken by the respondent in his impugned order at Annexure-B to this petition treating members of the family of the petitioner to be an association of persons runs counter to the aforesaid binding ruling of this court. It cannot therefore be sustained in law.

6. Learned Assistant Government Pleader Shri Sompura has invited by attention to the appellate order at Annexure-A to this petition in support of his submission that on different occasions the petitioner has taken up different contentions and those contentions were not accepted for cogent and convincing reasons given by the Appellate Authority in the impugned order at Annexure-A to this petition. It is true that in appeal it was contended on behalf of the petitioner that partition of his family properties had taken place in 1974 and that case was rightly not believed by the Appellate Authority. It is true that in appeal the petitioner also contended that the properties were purchased from the individual funds of his three major sons. That case also was rightly not rightly believed by the Appellate Authority in view of the material on record. In appeal, the petitioner had also contended that two parcels of land in Shrinagar Co-operative Society were constructed upto the plinth level. That case was also rightly not believed by the Appellate Authority. Relying on the contentions advanced by and on behalf of the petitioner in appeal as reflected in the appellate order at Annexure-A to this petition, learned Assistant Government Pleader Shri Sompura for the respondent has submitted that the petitioner's case that his holding was that of the joint Hindu family properties need not be believed.

7. I have found no merit or substance in the

aforesaid submission urged before me by learned Assistant Government Pleader Shri Sompura for the respondent. The reason therefor is quite simple. It may be noted that the declaration in the prescribed form was filed by the petitioner with respect to his holding on the date of coming into force of the Act. At that time, he clearly mentioned in the declaration that the holding was in the nature of the joint Hindu family properties. Since that case was accepted by the respondent, only one unit was given in the entire family treating members of the family as an association of persons. It appears that on behalf of the petitioner several other untenable contentions were taken and advanced in appeal before the Appellate Authority. That however would not deny the case of the petitioner as put up in the declaration filed some time in 1976. It appears that the case of partition was put up to reinforce the contention that it was the joint Hindu family property. The contentions urged by and on behalf of the petitioner in appeal were with a view to avoiding declaration of any surplus land. It was like a drowning man catching any and every straw available for saving his life. That would not however mean that the properties in the hands of the petitioner at the relevant time were not the joint Hindu family properties wherein his wife and his three major sons had interests.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition cannot be sustained in law. It may be mentioned that the respondent found the holding of the petitioner to be to the tune of 2007 square metres. If the petitioner, his wife and his three major sons had interests therein on the date of coming into force of the Act, the share of each one will be to the tune of 400 square metres. The wife's share will be included in the holding of the petitioner in view of the definition of 'person' and 'family' contained in section 2 (i) and (f) of the Act. In that case also, the holding of the petitioner would be to the tune of 800 square metres. The prescribed ceiling limit for the urban agglomeration of Vadodara is 1500 square metres. In that view of the matter, the holding of the petitioner or for that matter of all members of his family is not in excess of the ceiling limit for the purposes of the Act.

9. In the result, this petition is accepted. The order passed by the respondent on 31st January 1984 under section 8 (4) of the Act at Annexure-B to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 21st March 1990

in Appeal No.Vadodara-422 of 1984 at Annexure-A to this petition is quashed and set aside. It is hereby declared that the holding of the petitioner is not in excess of the ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.

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